IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.22 OF 2007
IN
CRI.APPEAL NO. OF 2007

M/s.Rupji Constructions ..Applicant

Vs.

Mr.Dominic John D'Souza
and Anr. ..Respondents

...

Ms.Savita Suryavanshi Advocate for Applicant
Mr.A.R.Patil A.P.P. for the State

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CORAM: SMT.V.K.TAHILRAMANI,J.
DATE : NOVEMBER 29, 2007

P.C.

1. The applicant has filed this application for leave to file appeal against the judgment and order dated 3.10.2006 passed by the learned Metropolitan Magistrate, 13th Court, Bhoiwada, Mumbai. By the said judgment and order, the learned Magistrate acquitted the Respondent No.1-accused of the offence under Section 138 of the Negotiable Instruments Act.

2. Heard the learned advocate for the applicant.

I have perused the judgment and order and the evidence annexed to the Appeal Memo.

3. In the present case, the cheque had been issued in respect of the transaction relating to purchase of flat bearing No.1401 in Rupji Villa at Parel, Mumbai. Consideration for the said flat was Rs.22,50,000/-. Out of which, amount of Rs.20 lakhs was already paid by the Respondent No.1 and only amount remained to be paid was Rs.2.5 lakhs. The cheque in respect of Rs.2.5 lakhs was dishonoured as the Respondent No.1 stopped payment. From the evidence on record, it is seen that the balance consideration amount of Rs.2.5 lakhs was agreed to be paid after delivery of the possession of the flat but the flat was not ready for possession and occupation certificate was not secured by the complainant. As the complainant was not able to hand over the possession, no legal liability existed to pay Rs.2.5 lakhs to the complainant. It is admitted position that the Complainant never delivered the possession of the flat though he received major part of consideration amount upto Rs.20 lakhs. So unless accused received the title and possession of the flat,

liability of payment of cheque is not created and therefore, it is clear that the cheque is not issued against any existing liability and dues and therefore, question of criminal liability on dishonour of cheque, does not arise. The learned Magistrate has acquitted the Respondent-accused on the ground that there was no existing liability or debt so offence under Section 138 of the Negotiable Instruments Act, was not made out. Looking to the evidence on record, I am of the opinion that the view taken by the learned Magistrate is a reasonable and possible view.

4. It is well settled that if the view of acquittal could have been reasonably arrived at then the mere circumstance that the appellate Court would have taken a different view, would be no ground to interfere. In this connection, there is no dearth of authorities but to eschew prolixity, I am referring to only two of them i.e. **AIR 1971 S.C. 66 Khedu Mohton and Ors. Vs. State of Bihar and C. Anthony Vs. K.G.Raghavan Nair (2003) 1 SCC 1.** In the case of **C.Anthony**, the Supreme Court has observed that unless the findings of the trial Court are perverse or contrary to the material on

record, the High Court cannot in appeal substitute its findings, merely because another contrary opinion was possible on the basis of material on record. As stated earlier, the view taken by the learned Magistrate is a reasonable and possible view, hence, no interference is called for.

5. In this view of the matter, application for leave to appeal is rejected. Consequently, appeal stands dismissed.

[SMT. V.K.TAHILRAMANI,J.]